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July 1, 2004

Hon. Nancy Gertner
United States District Judge
District of Massachusetts
1 Courthouse Way
Boston, MA 02210

Re: David G. Stern v. David L. Winn
Civil File # 04-10465-NG

FILED
CLERKS OFFICE
2004 JUL -8 A 11:30
U.S. DISTRICT COURT
DISTRICT OF MASS.

Dear Judge Gertner,

I am writing to supplement my Answer to Respondant's Motion to Dismiss and Memorandum in Support thereof filed June 7, 2004. Although research resources are limited and often not timely, the decision in the matter of Zeigler v. John Ashcroft, et. al., 04-719 (D. Md. March 31, 2004)(Judge William M. Nickerson)is extremely enlightening both in terms of his analysis of the issues raised in the instant case and his commentary concerning the government's position generally. In discussing the argument proffered defending "the new policy" he notes that "[c]uriously, the government's brief completely ignores the growing body of case law refuting precisely the same positions that it now advances." He goes on to say "in the government's view, these decisions invalidating the new policy are simply the outgrowth of an "emotional" reaction on the part of the judiciary...and for that reason, these holdings should be ignored." (citation is from page 3 of the copy of the decision attached).

If indeed this is the posture of the government, and from everything that can be gleaned from the increasing body of cases which the "new policy" has spawned, Petitioner respectfully requests that this Honorable Court treat the government's Motion to Dismiss as one for Summary Judgment and enter an Order denying the Motion to Dismiss and granting Summary Judgment to Petitioner. No issue of fact or law exists. (Also refer Colton v. Ashcroft,

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03-554 (E.D. Ky. January 15, 2004) (Judge Jennifer Coffman) Unfortunately, I do not have a copy of the foregoing, although I assure the Court that it is well reasoned and comprehensive and is far from "emotional".

Thanking you in advance, I remain,

yours very truly,

David G. Stern

enclosure

cc: Jeremy Sternbery, AUSA w/o enclosure